

SHER TREMONTE LLP

March 20, 2020

VIA ECF AND EMAIL

The Honorable LaShann DeArcy Hall
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Howard Campbell*
Case No. 18 Cr. 467 (LDH)

Dear Judge DeArcy Hall:

We write on behalf of our client, Howard Campbell, in brief reply to the government's letter dated March 19, 2020 in opposition to our motion for reconsideration. We will address the substance of the government's argument in the telephone conference scheduled for today at 1 P.M., but we write to correct certain misleading statements and omissions in the government's letter.

First, the government asserts that there are no confirmed cases of COVID-19 in BOP facilities. *See* Gov't Ltr. at 3 n.2. News reports, however, have quoted agency officials as confirming two cases of infection within the BOP, one a staff member at FCI Berlin in New Hampshire and one employee at the BOP computation and designation center in Grand Prairie, Texas.¹ We also understand from anecdotal information that a U.S. Marshal working in our courthouse has tested positive and six other Marshals await results of testing.²

Second, the government continues to rely on the BOP's assurances that it is taking steps to protect the health of the inmates and staff at its facilities. But statements from actual BOP employees inside those facilities tell a very different story. Union representatives for the corrections officers have stated, "The agency is in chaos," and

¹ David Shortell & Kara Scannell, *New coronavirus cases in US jails heighten concerns about an unprepared system*, CNN.com, Mar. 18, 2020, <https://www.cnn.com/2020/03/18/politics/coronavirus-in-us-jails-heighten-concerns/index.html>.

² Further, as is clear from news reports, an absence of confirmed cases likely reflects a lack of available testing, not a dearth of infections, as the number of cases in New York City has skyrocketed based on the recent processing of tests. N.Y. Times, *A jump in testing yields a spike in new cases*, Mar. 20, 2020, <https://www.nytimes.com/2020/03/20/nyregion/coronavirus-new-york-update.html?action=click&module=Spotlight&pgtype=Homepage#link-323c5c90>

“We are scrambling to get things in order.”³ Employees at the Federal Correctional Institution in Tallahassee, Florida, have reported that they are being required to share 60 protective masks among 200 employees, they lack soap and hand sanitizer, and they are being forced to reuse disposable masks.⁴ Officers at the MCC in Manhattan have reported anonymously that there has been *no* change in operations in response to the virus, and the facility is operating with less than half of its staff.⁵ An officer at the MCC candidly told reporters that if an inmate comes into the facility infected, “no staff is going to come into work.”⁶

Third, the government relies on the decision of Judge Brodie to continue detention for the defendant in *United States v. Hamilton*, No. 19-CR-54 (NGG), but fails to mention the fact that the defendant in that case is charged with *two murders*. See Indictment, *United States v. Hamilton*, No. 19-CR-54 (NGG) (E.D.N.Y. Jan. 31, 2019), ECF No. 1. That the current situation did not change the calculus as to whether that individual was a danger to the community has no bearing on how the Court should treat Mr. Campbell, a low-level drug offender.

Finally, the government incorrectly states that Mr. Campbell’s Sentencing Guidelines range is 63 to 78 months’ incarceration. That is wrong. That range is based on the calculation in the PSR, which erroneously enhanced the offense level to 20 and miscalculated Mr. Campbell’s Criminal History to be in Category V. As we will demonstrate at sentencing, the correct offense level is 12 and Mr. Campbell is in Criminal History Category III, yielding a Guidelines range of 15 to 21 months.

Respectfully submitted,

/s/ _____
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Attorneys for Howard Campbell

cc: AUSA Kayla Bensing (via ECF)
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³ Cassidy McDonald, *Federal prison workers say conflicting orders on coronavirus response is putting live at risk*, CBS News, Mar. 19, 2020, <https://www.cbsnews.com/news/coronavirus-prison-federal-employees-say-conflicting-orders-putting-lives-at-risk-2020-03-19/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*